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EMD CHEMICALS INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TROLL BUSTERS® LLC

C.A. No. 3:11-cv-00056-JEG -WVG

Plaintiff,

**EMD CHEMICALS, INC.'S RULE 5.1  
NOTICE OF CONSTITUTIONAL  
CHALLENGE**

V

ROCHE DIAGNOSTICS GMBH, et al.,

## Defendants.

17 EMD Chemicals, Inc., files this Notice regarding its constitutional challenge to 35 U.S.C §  
18 292 (the false marking statute), which is set forth in Roche Molecular Systems and Roche  
19 Diagnostics Corporations' motion to dismiss the First Amended Complaint, filed on May 4, 2011,  
20 in which EMD Chemicals, Inc., joined on May 9, 2011.

21 The question raised by EMD Chemicals, Inc.’s constitutional challenge is whether 35  
22 U.S.C. § 292 violates the Take Care Clause of Article II, § 3 of the United States Constitution by  
23 failing to include any of the procedural safeguards that have been held to preserve the  
24 constitutionality of other *qui tam* statutes like the False Claims Act, such as the right of the United  
25 States to be notified by the relator of a case before a defendant is served, the right to intervene, the  
26 right to seek dismissal or settlement of a false marking action over the objection of the relator, and  
27 the right to prevent dismissal of the action by the relator.

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2 Respectfully submitted,  
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4 Dated: May 9, 2011  
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CONNOLLY BOVE LODGE & HUTZ LLP

5 By: /s/ Scott R. Miller  
6 Scott R. Miller  
7 Attorneys for EMD Chemicals Inc.  
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